No. 75-1491

In the Supreme Court of the United States

OCTOBER TERM, 1975

PACIFIC LEGAL FOUNDATION AND PUBLIC LANDS COUNCIL, INC., PETITIONERS

v.

NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.
AND
THOMAS S. KLEPPE, SECRETARY OF THE INTERIOR, AND CURTIS BERKLUND, DIRECTOR OF THE BUREAU OF LAND MANAGEMENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

ROBERT H. BORK,
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1. The Taylor Grazing Act, 48 Stat. 1269 *et seq.*, as amended, 43 U.S.C. 315 *et seq.*, authorizes the Secretary of the Interior to establish grazing districts on public lands that in his opinion are chiefly valuable for grazing and raising forage crops, and to issue permits to graze livestock in such districts (43 U.S.C. 315, 315b; 43 C.F.R. 4111.1 to 4115.2-6). In March 1974, pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, 83 Stat. 853, 42 U.S.C. 4332,[1] the Secretary issued a draft environ-

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[1]Section 102(2)(C) of the National Environmental Policy Act provides, in pertinent part, that "all agencies of the Federal Government shall * * * include in * * * major Federal actions significantly affecting the quality of the human environment, a detailed statement * * * on * * * the environmental impact of the proposed action, * * *."

mental impact statement that assessed the overall effect of the livestock grazing program on the public grazing lands (Pet. App. D 50).

The National Resources Defense Council, four other environmental organizations, and one individual commenced this action against the Secretary and the Director of the Bureau of Land Management, alleging that they violated the National Environmental Policy Act by failing to issue separate impact statements assessing the various effects of livestock grazing upon the specific geographic regions of public land where it was permitted. They sought declaratory relief or an order in the nature of mandamus requiring the federal defendants to issue such regional impact statements. Petitioners, two non-profit organizations concerned with range management, were permitted to intervene as party defendants.

On December 30, 1974, the district court granted plaintiffs' motion for summary judgment. The court held that the Secretary's proposed nationwide environmental impact statement was not sufficient to comply with the National Environmental Policy Act, and that therefore the federal defendants were required to issue regional impact statements that assessed the effects of livestock grazing on the different geographic areas of public land where it was permitted (Pet. App. D 70, 72).

Petitioners and the federal defendants filed notices of appeal. The defendants and plaintiffs thereafter reached agreement on the issuance of environmental impact statements for each of 212 regions of public grazing land, to be completed by 1988. On June 18, 1975, the district court approved the agreement and set forth its terms in the court's final judgment (Pet. App. F 76-83). On the federal defendants' motion, the court of

appeals dismissed their appeal from the district court's order of December 30, 1974. No party appealed from the district court's final judgment of June 18, 1975.

On petitioners' appeal from the December 30 order, the court of appeals affirmed *per curiam* (Pet. App. G 85).

2. Petitioners contend that the National Environmental Policy Act does not require the issuance of separate environmental impact statements to assess the effects of livestock grazing on different regions of public land. As we indicated above, however, the federal defendants have decided to issue such impact statements, under an agreement embodied in the district court's final judgment. Accordingly, the question whether the National Environmental Policy Act requires the issuance of such impact statements is moot. See *Securities and Exchange Commission* v. *Medical Committee for Human Rights*, 404 U.S. 403. The case cannot be considered a live controversy on the ground that the district court's original order is "capable of repetition, yet evading review," *Southern Pacific Terminal Company* v. *Interstate Commerce Commission*, 219 U.S. 498, 515, since the Secretary has decided to issue the agreed upon impact statements irrespective of whether he is required to do so under the National Environmental Policy Act.[2]

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[2]There is no reason to suppose that the issue will in the future evade review, or that the public interest in having the legality of the question settled is sufficient to overcome the necessity for an actual controversy. The question whether under the National Environmental Policy Act a court may require a federal agency to issue regional impact statements where the agency has prepared a nationwide, programmatic environmental impact statement and also prepares impact statements before taking specific actions that are likely to have significant effects upon the environment, is now pending before this Court in *Kleppe* v. *Sierra Club, Inc.*, No. 75-552, argued

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JUNE 1976.

April 28, 1976, which concerns coal mining on federal lands by private parties under mining plans approved by the Department of the Interior.

There is no reason to hold the present petition pending the Court's disposition in *Kleppe*, however, since in the instant case the Secretary has decided to issue regional impact statements assessing the effects of grazing on different areas of public lands. Accordingly, if this Court should decide in *Kleppe* that the Act does not require the issuance of additional impact statements in the circumstances of that case, that decision would not affect the disposition in the instant case.